

CONTRACT #5
RFS # 317.05-038

**Department of Finance and
Administration**

VENDOR:
Bank of America, N.A. (USA)
and Link2Gov Corporation



STATE OF TENNESSEE
DEPARTMENT OF FINANCE AND ADMINISTRATION
DIVISION OF ACCOUNTS
21ST FLOOR, WILLIAM R. SNODGRASS TENNESSEE TOWER
312 - 8TH AVENUE, NORTH
NASHVILLE, TENNESSEE 37243-0293

DAVE GOETZ
COMMISSIONER

To: Jim White, Director
Fiscal Review Committee
G-19 War Memorial Building

From: Jan Sylvis
Chief of Accounts

Subject: Non-Competitive Contract

Date: January 31, 2005

The Division of Accounts establishes and manages a statewide contract for merchant services used to provide MasterCard and Visa credit card acceptance services to agencies. Our current contract with KMS expires July 9, 2005. The contract began on July 10, 2000 and was a three-year contract with two one-year extensions. The state began exploring a new procurement in 2002. We started the procurement process with a Request for Information (RFI) to determine how the marketplace had changed since our last procurement.

Our procurement required proposals by 10/20/2003. Several vendors proposed, but due to some not answering the basic RFP requirements and receiving multiple proposals from the same vendor, the RFP was cancelled. We initiated the next procurement so that the proposals were due on 1/26/2004. Again several vendors proposed, but due to their failure to respond to all requirements, none of the proposals submitted complied with the RFP requirements and the proposals were determined nonresponsive. Hoping to meet an upcoming deadline for not renewing the current contract, we attempted a competitive negotiation process with the same vendors who responded to the last procurement, along with additional vendors. Again, the responding vendors failed to meet the RFP requirements. Each time we reviewed our RFP requirements and made adjustments for marketplace issues.

We recently initiated a fourth procurement that required proposals by 01/07/05. We held a pre-bid conference that was well attended. We received five proposals. All but one vendor failed to meet the RFP requirements. The remaining vendor passed the mandatory and technical requirements, but failed to complete the cost proposal as required. Its cost proposal varied from the format on one small category, Diner's Club credit card acceptance.

We request to enter into a non-competitive negotiation with this remaining vendor. Our intention was to contract with a vendor to begin the transition in March within the state parks before their peak season. To be able to convert to a new vendor by the current contract termination date, we need to identify a vendor promptly. By negotiating with the remaining vendor, the state will be able to clarify the cost item and move towards executing a contract for merchant services in time to provide uninterrupted service to state agencies.

REQUEST: NON-COMPETITIVE CONTRACT

APPROVED

Commissioner of Finance & Administration

Date:

Each of the request items below indicates specific information that must be individually detailed or addressed as required. A REQUEST CAN NOT BE CONSIDERED IF INFORMATION PROVIDED IS INCOMPLETE, NON-RESPONSIVE, OR DOES NOT CLEARLY ADDRESS EACH OF THE REQUIREMENTS INDIVIDUALLY AS REQUIRED.

RFS #	317.05-038		
STATE AGENCY NAME :	Finance and Administration		
SERVICE CAPTION :	Statewide Credit Card & Debit Card Processing; Visa/Mastercard Acceptance & Settlement; Debit Card Acceptance & Settlement		
PROPOSED CONTRACTOR :	Bank of America, N.A.(USA) and Link2Gov Corporation		
CONTRACT START DATE : (if date is < 60 days after F&A receipt, attach required explanation)	March 1, 2005		
LATEST POSSIBLE END DATE : (including ALL options to extend)	February 28, 2007		
TOTAL MAXIMUM COST : (including ALL options to extend)	\$2,600,000 (estimated \$2,080,000 for card association interchange fees and rates and estimated \$520,000 for Contractor fees)		
APPROVAL CRITERIA : (select one)	<input checked="" type="checkbox"/> use of Non-Competitive Negotiation is in the best interest of the state <input type="checkbox"/> only one uniquely qualified service provider able to provide the service		
ADDITIONAL REQUIRED REQUEST DETAILS BELOW (address each item immediately following the requirement text)			
(1) description of service to be acquired :			
The State intends to secure a contract for: (a) Credit card, off-line debit card and on-line (PIN-based) debit card acceptance and processing services; (b) Implementation and support of Point-of-sale (POS) terminals, PC-based, Internet and third-party interface processing; (c) Ability to accept electronic checks over the counter.			
(2) explanation of the need for or requirement placed on the procuring agency to acquire the service :			
In order to provide credit/debit cards as payment options at state parks and on Tennessee.gov, a contract that governs the rules relating to the acceptance and processing is required.			
(3) explanation of whether the service was ever bought by the procuring agency in the past, and if so, what method was used			

to acquire it :

In 1991, the Department of Finance and Administration contracted for credit card acceptance and Point of Sale (POS) terminal deployment services for Tennessee State Parks. In 1996, a new contract was executed for use by all state agencies wanting to accept and process credit cards via POS terminals. The primary user of this contract remained Tennessee State Parks with its lodging, restaurant and retail outlets. The Department of Finance and Administration's Division of Accounts was responsible for management of the credit card acceptance contract. The fall of 2000 brought about a new contract and two significant events that moved the State into new modes of accepting and transmitting credit card information. In October 2000, the State entered the e-commerce world with the advent of a centralized state Internet portal, Tennessee.gov. The first application launched was the Department of Safety's Driver's License Renewal application. In November 2000, Tennessee State Parks began implementation of an integrated hospitality management system for its six resort parks. Also that fall, the State centralized within the Division of Accounts the recording of accounting entries for all transactions and fees processed by the merchant service contractor. The contracts for credit card acceptance and POS terminal services have been competitively procured (RFP process) with the exception of an interim period (1999 to 2000) when the 1996 contract was assigned to another vendor without the State's permission following a bank merger. The interim contract was implemented for continuity of services until a RFP could be issued and a new contract awarded.

(4) name and address of the proposed contractor's principal owner(s) :
(not required if proposed contractor is a state education institution)

Bank of America - 414 Union St. TN1-100-02-09, Nashville, TN 37219 - Martha Moss, Senior Vice President & Treasury Mgt. Sales Officer

Link2Gov Corporation - 1 Burton Hills Boulevard Suite 300, Nashville, TN 37215 - Edward M. Haslem, President

(5) evidence that the proposed contractor has experience in providing the service and evidence of the length of time the contractor has provided service :

The contractors' experience and its length of time in providing these services has been verified and evaluated as part of the review and evaluation of the Technical Proposals submitted in response to the 3 RFPs issued to obtain these services. See attached "Procurement Process for Merchant Services Contract"

(6) documentation of OIR endorsement of the Non-Competitive procurement request :
(required only if the subject service involves information technology)**select one:**☐

Documentation Not Applicable to this Request

☒

Documentation Attached to this Request

(7) documentation of Department of Personnel endorsement of the Non-Competitive procurement request :
(required only if the subject service involves training for state employees)**select one:**☒

Documentation Not Applicable to this Request

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(8) description of procuring agency efforts to identify reasonable, competitive, procurement alternatives rather than to use non-competitive negotiation :

See attached "Procurement Process for Merchant Services Contract"

(9) justification of why the state should acquire the service through Non-Competitive Negotiation rather than through a competitive process :
(Being the "only known" or "best" service provider to perform the service as desired will not be deemed adequate justification.)

See attached "Procurement Process for Merchant Services Contract"

AGENCY HEAD REQUEST SIGNATURE:

(must be signed by the ACTUAL procuring agency head as detailed on the Signature Certification on file with OCR — signature by an authorized signatory will be accepted only in documented exigent circumstances)

SIGNATURE DATE:



**STATE OF TENNESSEE
DEPARTMENT OF FINANCE AND ADMINISTRATION
DIVISION OF ACCOUNTS
14TH FLOOR W R SNODGRASS TENNESSEE TOWER
312 EIGHTH AVENUE NORTH
NASHVILLE, TENNESSEE 37243
FAX # 615.532.2332**

FACSIMILE TRANSMITTAL SHEET

TO:
Leni Chick

FROM:
Rhonda Hicks

COMPANY:

DATE:
2/1/2005

FAX NUMBER:
253-0318

TOTAL # OF PAGES INCLUDING COVER
6

COMMENTS/NOTES

Documents w/ original signatures and non-electronic documents

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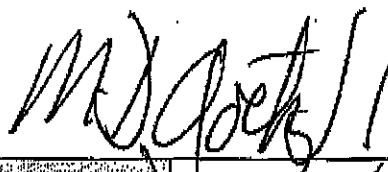
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AGENCY HEAD REQUEST SIGNATURE:

(must be signed by the ACTUAL procuring agency head as detailed on the Signature Certification on file with OCR — signature by an authorized signatory will be accepted only in documented exigent circumstances)



SIGNATURE DATE

2/1/2005



STATE OF TENNESSEE

FAX TRANSMITTAL

TO:	Bill Ezell, Chief Executive Officer Office for Information Resources	FAX # 741-4589
FROM:	Rhonda Hicks, Asst Director for Administration Division of Accounts	FAX # 532.2332
DATE:	October 1, 2004	
RFS#	317.05-029	
RE:	OIR Procurement Endorsement Documentation for — MERCHANT SERVICES (Credit card, debit card and electronic check acceptance and processing services; Point-of-sale terminals, PC-based, Internet and third-party interface processing; Ability to accept over the counter.	

NUMBER OF FAX PAGES (INCLUDING COVER):


The proposed, service procurement documents referenced above are hereby forwarded to the Office for Information Resources (OIR) for review. The subject scope of services appears to include information systems services or information technology support activities.

This communication seeks to ensure that OIR is aware of the procurement and has an opportunity to review the matter to determine whether OIR is supportive. Please indicate OIR endorsement of the procurement described by signature below and return this communication at your earliest convenience (note the return FAX number above).

If you have any questions or concerns about this matter, please call Rhonda Hicks at 741.9795.

Thank you for your help..

Attachment

OIR ENDORSES THE SUBJECT PROCUREMENT REQUEST
Office for Information Resources

Date

10/14/04

CONTRACT SUMMARY SHEET

RFS Number:	317.05-038		Contract Number:			
State Agency:	Department of Finance & Adm		Division:	Accounts		
Contractor			Contractor Identification Number			
Bank of America, N.A.(USA) and Link2Gov Corporation			<input checked="" type="checkbox"/>	V-		
			<input type="checkbox"/>	C-		
Service Description						
Contract for credit/debit card and electronic checking acceptance and processing serices						
Contract Begin Date			Contract End Date			
March 1, 2005			February 28, 2007			
Allotment Code	Cost Center	Object Code	Fund	Grant	Grant Code	Subgrant Code
317.05	2007	083	12	on STARS		
FY	State Funds	Federal Funds	Interdepartmental Funds	Other Funding	Total Contract Amount (including ALL amendments)	
2005			300,000		300,000	
2006			600,000		600,000	
2007			600,000		600,000	
2008			600,000		600,000	
2009			500,000		500,000	
Total:	-	-	2,600,000	-	2,600,000	
CFDA #			Check the box ONLY if the answer is YES:			
State Fiscal Contact			Is the Contractor a SUBRECIPIENT? (per OMB A-133)			
Name:	Rhonda Hicks		Is the Contractor a VENDOR? (per OMB A-133)			
Address:	14th Floor 312 8th Ave N		Is the Fiscal Year Funding STRICTLY LIMITED?			
Phone:	741-9795		Is the Contractor on STARS?			
Procuring Agency Budget Officer Approval Signature			Is the Contractor's FORM W-9 ATTACHED?			
			Is the Contractors Form W-9 Filed with Accounts?			
			Funding Certification			
COMPLETE FOR ALL AMENDMENTS (only)			Pursuant to T.C.A., Section 9-6-113, I, M. D. Goetz, Jr., Commissioner of Finance and Administration, do hereby certify that there is a balance in the appropriation from which this obligation is required to be paid that is not otherwise encumbered to pay obligations previously incurred.			
	Base Contract & Prior Amendments	This Amendment ONLY				
END DATE →	February 28, 2007					
FY: 2005	300,000					
FY: 2006	600,000					
FY: 2007	600,000					
FY: 2008	600,000					
FY: 2009	500,000					
Total:	2,600,000	-				

**CONTRACT
BETWEEN THE STATE OF TENNESSEE,
DEPARTMENT OF FINANCE AND ADMINISTRATION
AND
BANK OF AMERICA, N.A. (USA) AND LINK2GOV CORPORATION**

This Contract, by and between the State of Tennessee, Department of Finance and Administration, hereinafter referred to as the "State" and Bank of America, N.A.(USA) and Link2Gov Corporation, hereinafter referred to as the "Contractor," is for the provision of acquiring a broad range of merchant services, as further defined in the "SCOPE OF SERVICES."

The Contractor is a partnership between Bank of America a for-profit corporation and Link2Gov a privately held corporation. The Contractor's address is:

Bank of America, N.A. (USA)
1825 Buckeye
Phoenix, Arizona 85034

Link2Gov Corporation
1 Burton Hills Boulevard, Suite 300
Nashville, Tennessee

The Contractor's place of incorporation or organization is Arizona and Tennessee.

A. SCOPE OF SERVICES:

- A.1. Visa and MasterCard Acceptance, Authorization and Settlement: Under the terms of this Contract the State will accept valid Visa and MasterCard credit and off-line debit cards when presented as payment for goods and services at State offices and facilities. The State will also accept valid Visa and MasterCard credit cards and off-line debit cards over the State's Internet Portal. The Contractor will arrange for payment to the State for amounts arising from Visa and MasterCard credit and debit cards where such indebtedness arises from transactions that comply with the terms of this Contract and represent bona fide sales or leases of goods or services. The Contractor is a member of Visa U.S.A. Incorporated, MasterCard International Incorporated and provides services to businesses accepting credit cards and off-line debit cards issued under the Visa and MasterCard programs.
- A.2. American Express, Diners, Discover Cards Authorization: The Contractor's processor shall meet all the rules and requirements necessary to process authorizations for American Express, Diners/Carte Blanche and Discover cards so that American Express, Diners/Carte Blanche and Discover cards are available for use at all Point-of-Sale and Internet locations. The State has entered into separate agreements for American Express, Diners/Carte Blanche and Discover cards that govern acceptance and settlement of these cards.
- A.3. On-line (PIN-based) Debit Card Acceptance, Authorization and Settlement. Under the terms of this Contract the State will accept on-line debit cards (PIN-based) when presented as payment for goods and services at State offices and facilities. The Contractor will arrange for payment to the State for amounts arising from debit cards where such indebtedness arises from transactions that comply with the terms of this Contract and represent bona fide sales or leases of goods or services.
- A.4. Electronic Check Service Acceptance and Settlement: Under the terms of this Contract the State will accept electronic checks over the counter when presented as payment for goods and services at State offices and facilities. The Contractor will arrange for payment to the State for amounts arising from electronic check transactions where such indebtedness arises from transactions that comply with the terms of this Contract and represent bona fide sales or leases of goods or services.
- A.5. Merchant Agreement. The State and Contractor shall agree to a separate Merchant Agreement that further delineates roles and responsibilities in credit card, debit card and check acceptance, presentation, authorization, and the management of refunds, credits, returns, and chargebacks. This Merchant Agreement is Attachment B to this Contract.

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- A.6. Notification of Rate Changes. The Contractor shall provide written notification to the State of all applicable industry-wide interchange, dues, assessments and other fee changes by MasterCard and/or Visa at least 30 days prior to the effective date of the rate change.
- A.7. Authorization. The Contractor shall provide an on-line authorization service that is capable of capturing and verifying data necessary to electronically process MasterCard, Visa, American Express, Diners/Carte Blanche, and Discover card transactions. Batch processing of authorizations is unacceptable. The on-line authorization service must operate 24 hours a day, 365 days per year.
- A.8. Settlement. The Contractor shall process electronic funds transfer and automated clearinghouse transactions related to the settlement of the State's credit and debit card transactions. Upon presentation of such card item to the Contractor, accompanied by a form or format provided by the Contractor listing all card items presented at such time, and subject to the terms, conditions, warranties, and the State's obligations set out in this agreement and in the Merchant Agreement defined in Section A.5. Merchant Agreement, above, the Contractor will process the card items in the appropriate clearing systems. Upon receipt of settlement of credit by the Contractor for such card items, the Contractor will cause "the Account" (as defined below in Section A.8.1.) to be credited with an amount equal to the credit received by the Contractor in respect of the card items processes. This settlement process should be in accordance with the Contractor's Proposal Attachment 6.3 Technical Proposal and Evaluation Guide —Section C.5.
- A.8.1. The Account. The State will maintain a demand account in good standing ("the Account") with a financial institution and account number as the State may determine, to be communicated to the Contractor in writing. Such financial institution shall be a State Depository institution pursuant to Tennessee Code Annotated, Section 9-4-107. Unless otherwise directed by the State all credits or transfers of card items herein under shall be made to the financial institution at the account number specified. All other credits or transfers shall be unauthorized transfers. The State shall take all action necessary to ensure that the Contractor has the right to debit or credit the Account under the terms of the contract.
- A.8.2. Automated Settlement. The Contractor will provide an automated settlement capability, which occurs without human intervention.
- A.8.3. Settlement Timeframes. The Contractor shall deposit funds in accordance with the agreed upon timeframes for funds to be available to the State as referenced in the Contractor's Proposal Attachment 6.3 Technical Proposal and Evaluation Guide —Section C.8.
- A.9. Alternate Site and Systems. The Contractor will establish and maintain an alternative processing arrangement adequate to resume immediately the credit card authorization and processing services provided under this agreement, in the event the Contractor's primary operation site or equipment is unavailable due to either human error, equipment failure, man made or natural disaster.
- A.10. Chargebacks and Retrievals. The Contractor shall cooperate with the State to resolve any disputed Credit Cardholder charges that may occur in accordance with applicable law and the applicable rules, regulations, and operating procedures of MasterCard and Visa. The Contractor shall provide all available documentation to the State for chargebacks and retrieval requests. The Contractor shall provide sufficient information regarding the disputed charge as necessary to aid the State in resolving the claims.
- A.11. Reporting. For reconciliation and auditing purposes, the Contractor will provide timely and accurate reporting information in accordance with Contractor's Proposal Attachment 6.3 Technical Proposal and Evaluation Guide —Section C.10 and Section C.11 which includes information on daily captured (settled) transactions at statewide, agency and merchant location levels.
- A.11.1. Daily Captured (Settled) Transaction File. This file must detail all items that were previously authorized and have been settled. The following minimum data must be available at the completion of the settlement request: merchant number, batch number, date and time of settlement request, total number of transactions, total amount of the transactions, and total number of transactions and amounts by card type. For each detail item within the batch, the following minimum data must be provided: merchant number, batch number, date and time settled, authorization number, and amount of the transaction. The settlement data must be accessible (access and retrieval) on a daily basis for the State to use in creation of accounting entries.

- A.12. Merchant Numbers. Upon the State's request, the Proposer will establish and maintain merchant numbers for each agency location accepting credit/debit card transactions. New merchant numbers shall be established within five business days.
- A.13. Equipment/Software. The Contractor shall reprogram existing State-owned point-of-sale equipment that can meet card association requirements. Point-of-sale equipment must be programmed so that no more than the last 5 digits of the card number or the expiration date is printed upon any receipt provided to the cardholder at the point of sale or transaction. The Contractor will provide authorization and imprinting equipment and/or software at sales locations as needed by the State. All equipment provided will be new, commercially available equipment. The Contractor will provide routine and non-routine servicing and maintenance of equipment at each location on conditions and terms to be mutually agreeable to the Contractor and the State. In the event of breakdown of the State's current POS terminals, the Contractor will make available new equipment or exchange equipment through a swap program as referenced in the Contractor's Proposal Attachment 6.3 Technical Proposal and Evaluation Guide —Section C.13.
- A.14. Certifications. The Contractor shall provide the necessary message formats and communication requirements to the State for system interfaces. The Contractor shall complete system interface certifications within 60 days from the date the State provides notice to the Contractor that the new system application is complete and the telecommunication connections are in place.
- A.15. Training. The Contractor shall at the request of the State provide training sessions at locations to be determined by the State and at times to be mutually agreeable to both the Contractor and the State. In addition, the Contractor will provide the State with continuation training by telephone to State staff members as part of its regular merchant services and provide on-site continuation training when requested by the State, on mutually agreeable terms.

The State will require training prior to implementation activity under this contract. Agency staff attending these sessions will include staff from the business area, accounting and technical areas.

The training sessions must include but are not limited to:

- a) Onsite training for staff utilizing Contractor provided reporting application
- b) Telephone training for staff utilizing equipment or software

Onsite training should also provide information on the functions and options available under the contract, authorization and settlement processes, implications of processing cut-off times for settlement, reporting capability for reconciliation, and industry rules, terms and conditions.

- A.16. Project Staff. The State requires the Contractor to supply the following Core Team personnel at a minimum:

One (1) Project Manager with a minimum of two (2) years of current experience in managing large, complex projects with outstanding interpersonal and communication skills. The project manager must have management responsibility for project quality. He/she must have sufficient authority to act independently to resolve quality related issues at the project level. The project manager must maintain current knowledge of the project's status and be accessible to State project management.

One (1) Customer Service Representative with a minimum of two (2) years of current experience as a Customer Service Representative with excellent interpersonal and communication skills. The customer service representative is expected to be the lead role for the day-to-day operations and interactions that may occur between the State and the Contractor. Areas of knowledge should include, but not be limited to, transaction processing, settlements, and data.

One (1) Technical Solutions Representative with a minimum of two (2) years of current experience in participating in and coordinating system interfaces with outstanding interpersonal and communication skills. The technical solutions representative is expected to coordinate the successful resolution of technological issues that are encountered above and beyond day-to-day operations. Areas of action would include system interface certifications, connectivity issues, and reporting solution issues not related to end-user training.

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Core Team personnel will be available for weekly conference calls during conversion and rollout and throughout the contract as requested by the State. In addition, the Contractor will provide a customer service center which operates 24 hours a day, 365 days per year for day to day resolution of acceptance, authorization, processing or settlement issues.

- A.17. Statewide Rollout. The Contractor will implement statewide rollout of services under this Contract in accordance with its approved installation and implementation schedule prepared in response to RFP Attachment 6.3 Section C.17.
- A.18. Operational Review: The Contractor will perform a review of the State's electronic payment acceptance operations (both online and POS) and provide recommendations for equipment/software configurations and communication methods.
- A.19. Political Subdivisions. The Contractor may provide its services and unit prices pursuant to this Contract to political subdivisions of the State such as city and county governments and special districts and to State of Tennessee higher education institutions. These political subdivisions and higher education institutions may choose whether or not to use the Contractor's services. If a political subdivision or higher education institution chooses the Contractor's services and unit prices, it will contact the Contractor and enter into its own agreement. The State is not a party to any agreement between a political subdivision or higher education institution and the Contractor and does not bear any liability under such an agreement.
- A.20. Security. The Contractor shall provide the ability to execute secure, two-way transactions and ensure that card numbers, name, address, and expiration dates are secured through encryption, authentication, and other standard credit card operating procedures. The Contractor will maintain and ensure data integrity and user confidentiality and privacy as described in Section E.6. of this Contract. The Contractor will ensure that security provisions described in the Contractor's proposal to the State are maintained throughout the length of this Contract. The Contractor will report to the State any compromise of network security involving the State's transactional data.
- A.21. State's Technical Architecture. The Contractor shall provide all services requested through this RFP within the context of the technical environment described by the State's Technical Architecture. During the RFP proposal process, the Technical Architecture was provided upon request and is herein incorporated as Contract Attachment A.
- A.22. Performance Standard Guarantee.
- (1) Standards. The Contractor agrees the following performance standard shall be met upon successful implementation in accordance with the approved installation and implementation schedule.
 - (a) Assuming that national electronic payment networks are working properly, card transaction processing shall be continuous.
 - (2) Guarantee. If the Contractor does not meet the performance standard in Section A.22(1)(a), the amount of compensation payable to the Contractor during the month in which the standard was not met shall be reduced by \$500 for each 24 hour period for which card transaction processing is not continuous.
 - (3) Waiver of Reduction. The State shall notify the Contractor in writing within 10 calendar days of any reduction in compensation to be made pursuant to this Section. Any amount assessed hereunder may be waived by the State upon presentation of written documentation from the Contractor indicating why the standard was not met. Such documentation must be submitted to the State within ten (10) calendar days of the issuance of a notice of reduction.
- B. CONTRACT TERM:
- B.1. Contract Term. This Contract shall be effective for the period commencing on March 1, 2005 and ending on February 28, 2007. The State shall have no obligation for services rendered by the Contractor which are not performed within the specified period.

- B.2. Term Extension. The State reserves the right to extend this Contract for an additional period or periods of time representing increments of no more than one year and a total contract term of no more than five (5) years, provided that the State notifies the Contractor in writing of its intention to do so at least thirty (30) days prior to the contract expiration date. An extension of the term of this Contract will be effected through an amendment to the Contract. If the extension of the Contract necessitates additional funding beyond that which was included in the original Contract, the increase in the State's maximum liability will also be effected through an amendment to the Contract and shall be based upon rates provided for in the original contract.

C. PAYMENT TERMS AND CONDITIONS:

- C.1. Maximum Liability. In no event shall the maximum liability of the State under this Contract exceed [WRITTEN DOLLAR AMOUNT] (\$[NUMBER AMOUNT]). The Unit Prices in Section C.3 shall constitute the entire compensation due the Contractor for the Service and all of the Contractor's obligations hereunder regardless of the difficulty, materials or equipment required. The Unit Prices include, but are not limited to, all applicable taxes, fees, overheads, and all other direct and indirect costs incurred or to be incurred by the Contractor.

The Contractor is not entitled to be paid the maximum liability for any period under the Contract or any extensions of the Contract for work not requested by the State. The maximum liability represents available funds for payment to the Contractor and does not guarantee payment of any such funds to the Contractor under this Contract unless the State requests work and the Contractor performs said work. In which case, the Contractor shall be paid in accordance with the Unit Prices detailed in Section C.3. The State is under no obligation to request work from the Contractor in any specific dollar amounts or to request any work at all from the Contractor during any period of this Contract.

- C.2. Compensation Firm. The Unit Prices and the Maximum Liability of the State under this Contract are firm for the duration of the Contract and are not subject to escalation for any reason unless amended.

- C.3. Payment Methodology. The Contractor shall be compensated based on the actual costs paid by the Contractor for the credit card associations' and the debit networks' interchange, dues, assessments and fees and the Unit Prices set forth in Attachment C to this Contract, in amounts not to exceed the Contract Maximum liability established in Section C1. The Contractor's compensation shall be contingent upon the satisfactory completion of services as defined in the Scope of Services section of this contract.

The Contractor shall submit monthly invoices, in form and substance acceptable to the State with all of the necessary supporting documentation. Such invoices shall be submitted for completed units of service for the amount stipulated.

- C.4. Travel Compensation. The Contractor shall not be compensated or reimbursed for travel, meals, or lodging.
- C.5. Payment of Invoice. The payment of the invoice by the State shall not prejudice the State's right to object to or question any invoice or matter in relation thereto. Such payment by the State shall neither be construed as acceptance of any part of the work or service provided nor as an approval of any of the amounts invoiced therein.
- C.6. Invoice Reductions. The Contractor's invoice shall be subject to reduction for amounts included in any invoice or payment theretofore made which are determined by the State, on the basis of audits conducted in accordance with the terms of this contract, not to constitute proper remuneration for compensable services.
- C.7. Deductions. The State reserves the right to deduct from amounts which are or shall become due and payable to the Contractor under this or any contract between the Contractor and the State of Tennessee any amounts which are or shall become due and payable to the State of Tennessee by the Contractor.

D. STANDARD TERMS AND CONDITIONS:

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- D.1. Required Approvals. The State is not bound by this Contract until it is approved by the appropriate State officials in accordance with applicable Tennessee State laws and regulations.
- D.2. Modification and Amendment. This Contract may be modified only by a written amendment executed by all parties hereto and approved by the appropriate Tennessee State officials in accordance with applicable Tennessee State laws and regulations.
- D.3. Termination for Convenience. The State may terminate this Contract without cause for any reason. Said termination shall not be deemed a Breach of Contract by the State. The State shall give the Contractor at least thirty (30) days written notice before the effective termination date. The Contractor shall be entitled to receive compensation for satisfactory, authorized service completed as of the termination date, but in no event shall the State be liable to the Contractor for compensation for any service which has not been rendered. Upon such termination, the Contractor shall have no right to any actual general, special, incidental, consequential, or any other damages whatsoever of any description or amount.
- D.4. Termination for Cause. If the Contractor fails to properly perform its obligations under this Contract in a timely or proper manner, or if the Contractor violates any terms of this Contract, the State shall have the right to immediately terminate the Contract and withhold payments in excess of fair compensation for completed services. Notwithstanding the above, the Contractor shall not be relieved of liability to the State for damages sustained by virtue of any breach of this Contract by the Contractor.
- D.5. Subcontracting. The Contractor shall not assign this Contract or enter into a subcontract for any of the services performed under this Contract without obtaining the prior written approval of the State. If such subcontracts are approved by the State, they shall contain, at a minimum, sections of this Contract pertaining to "Conflicts of Interest" and "Nondiscrimination" (sections D.6. and D.7.). Notwithstanding any use of approved subcontractors, the Contractor shall be the prime contractor and shall be responsible for all work performed.
- D.6. Conflicts of Interest. The Contractor warrants that no part of the total Contract Amount shall be paid directly or indirectly to an employee or official of the State of Tennessee as wages, compensation, or gifts in exchange for acting as an officer, agent, employee, subcontractor, or consultant to the Contractor in connection with any work contemplated or performed relative to this Contract.
- D.7. Nondiscrimination. The Contractor hereby agrees, warrants, and assures that no person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of this Contract or in the employment practices of the Contractor on the grounds of disability, age, race, color, religion, sex, national origin, or any other classification protected by Federal, Tennessee State constitutional, or statutory law. The Contractor shall, upon request, show proof of such nondiscrimination and shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.
- D.8. Records. The Contractor shall maintain documentation for all charges against the State under this Contract. The books, records, and documents of the Contractor, insofar as they relate to work performed or money received under this contract, shall be maintained for a period of three (3) full years from the date of the final payment and shall be subject to audit at any reasonable time and upon reasonable notice by the State, the Comptroller of the Treasury, or their duly appointed representatives. The financial statements shall be prepared in accordance with generally accepted accounting principles.
- D.9. Monitoring. The Contractor's activities conducted and records maintained pursuant to this Contract shall be subject to monitoring and evaluation by the State, the Comptroller of the Treasury, or their duly appointed representatives.
- D.10. Progress Reports. The Contractor shall submit brief, periodic, progress reports to the State as requested.
- D.11. Strict Performance. Failure by any party to this Contract to insist in any one or more cases upon the strict performance of any of the terms, covenants, conditions, or provisions of this Contract shall not be construed as a waiver or relinquishment of any such term, covenant, condition, or provision. No term or condition of this Contract shall be held to be waived, modified, or deleted except by a written amendment signed by the parties hereto.

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- D.12. Independent Contractor. The parties hereto, in the performance of this Contract, shall not act as employees, partners, joint venturers, or associates of one another. It is expressly acknowledged by the parties hereto that such parties are independent contracting entities and that nothing in this Contract shall be construed to create an employer/employee relationship or to allow either to exercise control or direction over the manner or method by which the other transacts its business affairs or provides its usual services. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purpose whatsoever.

The Contractor, being an independent contractor and not an employee of the State, agrees to carry adequate public liability and other appropriate forms of insurance, including adequate public liability and other appropriate forms of insurance on the Contractor's employees, and to pay all applicable taxes incident to this Contract.

- D.13. State Liability. The State shall have no liability except as specifically provided in this Contract.
- D.14. Force Majeure. The obligations of the parties to this contract are subject to prevention by causes beyond the parties' control that could not be avoided by the exercise of due care including, but not limited to, acts of God, riots, wars, strikes, epidemics or any other similar cause.
- D.15. State and Federal Compliance. The Contractor shall comply with all applicable State and Federal laws and regulations in the performance of this Contract.
- D.16. Governing Law. This Contract shall be governed by and construed in accordance with the laws of the State of Tennessee. The Contractor agrees that it will be subject to the exclusive jurisdiction of the courts of the State of Tennessee in actions that may arise under this Contract. The Contractor acknowledges and agrees that any rights or claims against the State of Tennessee or its employees hereunder, and any remedies arising therefrom, shall be subject to and limited to those rights and remedies, if any, available under ***Tennessee Code Annotated***, Sections 9-8-101 through 9-8-407.
- D.17. Completeness. This Contract is complete and contains the entire understanding between the parties relating to the subject matter contained herein, including all the terms and conditions of the parties' agreement. This Contract supersedes any and all prior understandings, representations, negotiations, and agreements between the parties relating hereto, whether written or oral.
- D.18. Severability. If any terms and conditions of this Contract are held to be invalid or unenforceable as a matter of law, the other terms and conditions hereof shall not be affected thereby and shall remain in full force and effect. To this end, the terms and conditions of this Contract are declared severable.
- D.19. Headings. Section headings of this Contract are for reference purposes only and shall not be construed as part of this Contract.

E. SPECIAL TERMS AND CONDITIONS:

- E.1. Conflicting Terms and Conditions. Should any of these special terms and conditions conflict with any other terms and conditions of this Contract, these special terms and conditions shall control.
- E.2. Communications and Contacts. All instructions, notices, consents, demands, or other communications required or contemplated by this Contract shall be in writing and shall be made by facsimile transmission, by overnight courier service, or by first class mail, postage prepaid, addressed to the respective party at the appropriate facsimile number or address as set forth below or to such other party, facsimile number, or address as may be hereafter specified by written notice.

The State:

Terry Mason, Accounting Manager
Department of Finance and Administration
312 8th Avenue North, 14th Floor Tennessee Tower, Nashville, TN 37243
615.741.9744
615.532.2332 fax

The Contractor:

Bank of America
Karen M. Bottesch, Vice President & Merchant Sales Officer
414 Union St. TN1-100-02-09
Nashville, TN 37219
615.749.3761
615.749.3792 fax
Karen.bottesch@bankofamerica.com

Link2Gov Corporation
David Stephenson, Vice President of Channel Sales
1 Burton Hills Boulevard Suite 300
Nashville, TN 37215
615.297.2770 ext. 229
615.297.9032 fax
dstephenson@Link2Gov.com

All instructions, notices, consents, demands, or other communications shall be considered effectively given as of the day of delivery; as of the date specified for overnight courier service delivery; as of three (3) business days after the date of mailing; or on the day the facsimile transmission is received mechanically by the telefax machine at the receiving location and receipt is verbally confirmed by the sender if prior to 4:30 p.m. CST. Any communication by facsimile transmission shall also be sent by United States mail on the same date of the facsimile transmission.

E.3. Subject to Funds Availability. The Contract is subject to the appropriation and availability of State and/or Federal funds. In the event that the funds are not appropriated or are otherwise unavailable, the State reserves the right to terminate the Contract upon written notice to the Contractor. Said termination shall not be deemed a breach of Contract by the State. Upon receipt of the written notice, the Contractor shall cease all work associated with the Contract. Should such an event occur, the Contractor shall be entitled to compensation for all satisfactory and authorized services completed as of the termination date. Upon such termination, the Contractor shall have no right to recover from the State any actual, general, special, incidental, consequential, or any other damages whatsoever of any description or amount.

E.4. Incorporation of Additional Documents. Included in this Contract by reference are the following documents:

- a. The Contract document and its attachments
- b. All Clarifications and addenda made to the Contractor's Proposal
- c. The Request for Proposal and its associated amendments
- d. Technical Specifications provided to the Contractor
- e. The Contractor's Proposal

In the event of a discrepancy or ambiguity regarding the Contractor's duties, responsibilities, and performance under this Contract, these documents shall govern in order of precedence detailed above.

E.5. Prohibited Advertising. The Contractor shall not refer to this Contract or the Contractor's relationship with the State hereunder in commercial advertising in such a manner as to state or imply that the Contractor or the Contractor's services are endorsed.

E.6. Confidentiality of Records. Strict standards of confidentiality of records shall be maintained in accordance with the law. All material and information, regardless of form, medium or method of communication, provided to the Contractor by the State or acquired by the Contractor on behalf of the State shall be regarded as confidential information in accordance with the provisions of State law and ethical standards and shall not be disclosed, and all necessary steps shall be taken by the Contractor to safeguard the confidentiality of such material or information in conformance with State law and ethical standards.

The Contractor will be deemed to have satisfied its obligations under this section by exercising the same level of care to preserve the confidentiality of the State's information as the Contractor exercises to protect its own confidential information so long as such standard of care does not violate the applicable provisions

of the first paragraph of this section.

The Contractor's obligations under this section do not apply to information in the public domain; entering the public domain but not from a breach by the Contractor of this Contract; previously possessed by the Contractor without written obligations to the State to protect it; acquired by the Contractor without written restrictions against disclosure from a third party which, to the Contractor's knowledge, is free to disclose the information; independently developed by the Contractor without the use of the State's information; or, disclosed by the State to others without restrictions against disclosure.

It is expressly understood and agreed the obligations set forth in this section shall survive the termination of this Contract.

- E.7. Catalog of Products and Services Supplement(s). During the course of this contract, the State may request the Contractor to update the Catalog of Products and Services with additional products(s) or service(s). The additional data product(s) or service(s) shall be within the general scope of services. The State shall provide the Contractor with a written description of the additional product or service, and the Contractor shall submit a price for the additional item(s). If the State and Contractor reach an agreement regarding the product(s) or service(s) and the fee associated with the addition, the agreement shall become effective by means of a contract amendment. Any such amendment requiring additional product(s) or service(s) must be mutually agreed upon by the parties and signed by the Contractor and the head of the procuring State agency and must be approved by other State officials as required by State laws and regulations. The Contractor shall not commence additional work until the State has issued a written contract amendment and secured all required approvals.
- E.8. Date/Time Hold Harmless. As required by ***Tennessee Code Annotated***, Section 12-4-118, the contractor shall hold harmless and indemnify the State of Tennessee; its officers and employees; and any agency or political subdivision of the State for any breach of contract caused directly or indirectly by the failure of computer software or any device containing a computer processor to accurately or properly recognize, calculate, display, sort or otherwise process dates or times.
- E.9. Tennessee Consolidated Retirement System. The Contractor acknowledges and understands that, subject to statutory exceptions contained in ***Tennessee Code Annotated***, Section 8-36-801, *et. seq.*, the law governing the Tennessee Consolidated Retirement System, provides that if a retired member returns to State employment, the member's retirement allowance is suspended during the period of the employment. Accordingly and notwithstanding any provision of this Contract to the contrary, the Contractor agrees that if it is later determined that the true nature of the working relationship between the Contractor and the State under this Contract is that of "employee/employer" and not that of an independent contractor, the Contractor may be required to repay to the Tennessee Consolidated Retirement System the amount of retirement benefits the Contractor received from the Retirement System during the period of this Contract.
- E. 10. Interchange, Dues, Assessments and Fees. The Contractor shall maintain documentation of the actual costs for the credit card associations' and the debit networks' interchange, dues, assessments and fees paid by the Contractor. The Contractor shall provide such documentation as well as documentation of the credit card associations' and the debit networks' interchange descriptions, rates and fees at the State's request. The Contractor shall maintain such documentation in accordance with Section D.8. Records.
- E.11 Certificate of Insurance. The Contractor shall send a Certificate of Insurance Coverage to the State for each policy period covered during the length of the Contract, and shall notify the State of any change in the Financial Institution Blanket Bond Coverage. If the Contractor utilizes a financial institution for settlement, the Contractor shall send the Certificate of Insurance Coverage for the settlement bank.

IN WITNESS WHEREOF:

BANK OF AMERICA:

Karen Bottesch, Vice President

Date

LINK2GOV CORPORATION:

Edward M. Braswell, President

Date

DEPARTMENT OF FINANCE AND ADMINISTRATION:

M. D. Goetz, Jr., Commissioner

Date

APPROVED:

DEPARTMENT OF FINANCE AND ADMINISTRATION:

M. D. Goetz, Jr., Commissioner

Date

COMPTROLLER OF THE TREASURY:

John G. Morgan, Comptroller of the Treasury

Date

CONTRACT ATTACHMENT A

[When the contract is executed, the Tennessee Information Resources Architecture will be included here. The version to be included is the version that was distributed, at the Proposer's request, during the RFP and Proposal process.]

MERCHANT AGREEMENT

[When the contract is executed, the Contractor's Merchant Agreement required by Section A.5. will be included here.)

CONTRACT ATTACHMENT C**UNIT PRICES**

[When the contract is executed, the Contractor's Unit Prices from RFP Attachment 6.4 will be included here.]

Cost Item Description	Unit	Unit Price- Year 1	Unit Price- Year 2	Unit Price- Year 3	Unit Price- Year 4	Unit Price- Year 5
Authorization and Processing Fees:						
Visa and MasterCard - Rate Per Item (.XXXXX%)	\$ Volume					
Visa and MasterCard - Cost Per Item (\$XXXXX)	Each					
American Express - POS - Cost Per Item (\$XXXXX)	Each					
American Express - Internet - Cost Per Item (\$XXXXX)	Each					
Diners - POS - Cost Per Item (\$XXXXX)	Each					
Diners - Internet - Cost Per Item (\$XXXXX)	Each					
Discover - POS - Cost Per Item (\$XXXXX)	Each					
Discover - Internet - Cost Per Item (\$XXXXX)	Each					
On-line Debit card (PIN-based) - Cost Per Item (\$XXXXX)	Each					
Electronic Check Service Conversion Only - Rate Per Item (.XXXXX%)	\$ Volume					
Electronic Check Service Conversion Only - Cost Per Item (\$XXXXX)	Each					
Electronic Check Service Conversion with Verification - Rate Per Item (.XXXXX%)	\$ Volume					
Electronic Check Service Conversion with Verification - Cost Per Item (\$XXXXX)	Each					
Electronic Check Service Conversion with no less than \$500 guarantee - Rate Per Item (.XXXXX%)	\$ Volume					
Electronic Check Service Conversion with no less than \$500 guarantee - Cost Per Item (\$XXXXX)	Each					

Cost Item Description	Unit	Unit Price- Year 1	Unit Price- Year 2	Unit Price- Year 3	Unit Price- Year 4	Unit Price- Year 5
Equipment:						
Purchase of POS Terminal, printer & software with the following applications: <ul style="list-style-type: none"> Retail Application (features include: Address Verification, Purchasing Cards) Restaurant Application (features include: Waiter Banking, Server Report, IRS Tip Report) 	Each					
Purchase of POS Terminal, printer & software with the following applications: <ul style="list-style-type: none"> Retail Application (features include: Address Verification, Purchasing Cards) Restaurant Application (features include: Waiter Banking, Server Report, IRS Tip Report) Lodging Application (features include: No Show Billing, Delayed Charge, Express Charge, Card Deposit Function, Rapid Check-In, Incremental Authorizations, Update Folio Information) 	Each					
Purchase of POS Terminal, printer & software with the following applications: <ul style="list-style-type: none"> Retail Application (features include: Address Verification, Purchasing Cards) Restaurant Application (features include: Waiter Banking, Server Report, IRS Tip Report) IP-enabled terminal with Ethernet and dial capabilities 	Each					
Purchase of PC Software (for processing transactions at point-of-sale using a PC application)	Each					
Set-up Fee for Internet Virtual Terminal	Each					
Purchase of Electronic Check Services – Check Reader	Each					
Purchase of Electronic Check Services – Check Imager	Each					
Purchase of Debit Card Pin Pad	Each					
Equipment Maintenance:						
Monthly Maintenance Fee for POS Terminal, printer & software	Each					
Monthly Support Fee for PC Software (for processing transactions at point-of-sale using a PC application)	Each					
Monthly Support Fee for Internet Virtual Terminal	Each					
Monthly Maintenance Fee for Electronic Check Services – Check Reader	Each					

Cost Item Description	Unit	Unit Price- Year 1	Unit Price- Year 2	Unit Price- Year 3	Unit Price- Year 4	Unit Price- Year 5
Equipment Maintenance: (cont)						
Monthly Maintenance Fee for Electronic Check Services - Check Imager	Each					
Other charges:						
Merchant Number Set Up	Merchant #					
Merchant Number Maintenance	Merchant #					
Chargebacks	Each					

Procurement Process for Merchant Services Contract

Current Contract Information:

Contractor	Description	Begin Date	End Date	Contract Amount
Key Merchant Services, LLC (KMS)	Statewide Credit Card & Debit Card Processing; Visa/Mastercard Acceptance & Settlement; Debit Card Acceptance & Settlement	7/10/2000	7/9/2005	\$4,500,000

Procurement Process Summary:

Issue Date	Document	Description and/or Result	# Responses	Evaluation of Technical Proposals	Evaluation of Cost Proposals	Notice Date
11/19/2002	Request for Information (RFI) RFS 317.05-001	RFI sent to 15 companies for the purpose of better understanding new advances in credit/debit card acceptance. Companies were asked to provide responses to various technical questions concerning credit/debit card acceptance and processing.	9	n/a	n/a	n/a
9/8/2003	Request for Proposals (RFP) RFP 317.05-013	RFP for electronic payment acceptance and processing services sent to 32 potential vendors.	8	(1) Govolution Incorporated and (2) 5th 3rd Bank (proposal after deadline) - Multiple Proposals (3) Key Merchant Services, LLC and (4) U. S. Bank Merchant Payment Services - Multiple Proposals (5) Concord EFS, Inc./Link2Gov Corp. and (6) Bank of America/Link2Gov - Multiple Proposals (7) Global Payments Direct - nonresponsive to mandatory proposer qualifications (8) Paymentech L. P. - nonresponsive to mandatory proposer qualifications	n/a - based on the failure of all proposals to meet technical specifications, the RFP was cancelled	10/30/2003
12/5/2003	Request for Proposals (RFP) RFP 317.05-020	RFP for electronic payment acceptance and processing services sent to 36 potential vendors.	7	(1) Key Merchant Services, LLC and (2) U. S. Bank Merchant Payment Services - Multiple Proposals (3) Paymentech L. P. - nonresponsive to mandatory proposer qualifications	(1) Bank of America modified/qualified the Cost Proposal so in compliance with RFP language the proposal was deemed nonresponsive. (2) Concord EFS, Inc./Link2Gov Corp. modified the Cost Proposal so in compliance with RFP language the proposal was deemed nonresponsive.	2/17/2004

Procurement Process Summary:

Issue Date	Document	Description and/or Result	# Responses	Evaluation of Technical Proposals	Evaluation of Cost Proposals	Notice Date
				(4) Nationwide Payment Solutions, LLC and (5) First Data- Proposals received after the deadline (6) Concord EFS, Inc./Link2Gov Corp. - Technical Proposal met technical requirements (7) Bank of America - Technical Proposal met technical requirements		
2/17/2004	Competitive Negotiation Solicitation - RFS 317.05-022	Competitive Negotiation Solicitation for electronic payment acceptance and processing services sent to 8 vendors	5	(1) Paymentech L. P. and (2) Bank of America - letter not responding due to contract issues (3) Key Merchant Services, LLC - non-responsive to Mandatory Requirements. (4) GP Money Services - faxed one response including price schedule - non-responsive to Mandatory Requirements. (5) U S Bank - price schedule not sealed - response primarily to previous RFP not to Competitive Negotiation	None of the offers submitted complied with the Solicitation's requirements and as a result, all offers were determined nonresponsive.	3/29/2004
11/4/2004	Request for Proposals (RFP) RFP 317.05-029	RFP for electronic payment acceptance and processing services sent to 43 potential vendors.	5	(1) Wachovia Merchants Services /NOVA Information Systems and (2) U. S. Bank Merchant Payment Services/NOVA Information Systems - Multiple Proposals (3) Global Payments Direct, Inc. - Cost data in Technical Proposal and not a member of Visa/MasterCard (4) First Data - Cost data in Technical Proposal and not a member of Visa/MasterCard (5) Bank of America/Link2Gov - Technical Proposal met technical requirements	(1) Bank of America modified 1 cost item (Diners Card per item charge) in the Cost Proposal so in compliance with RFP language the proposal was deemed nonresponsive.	1/31/2005